

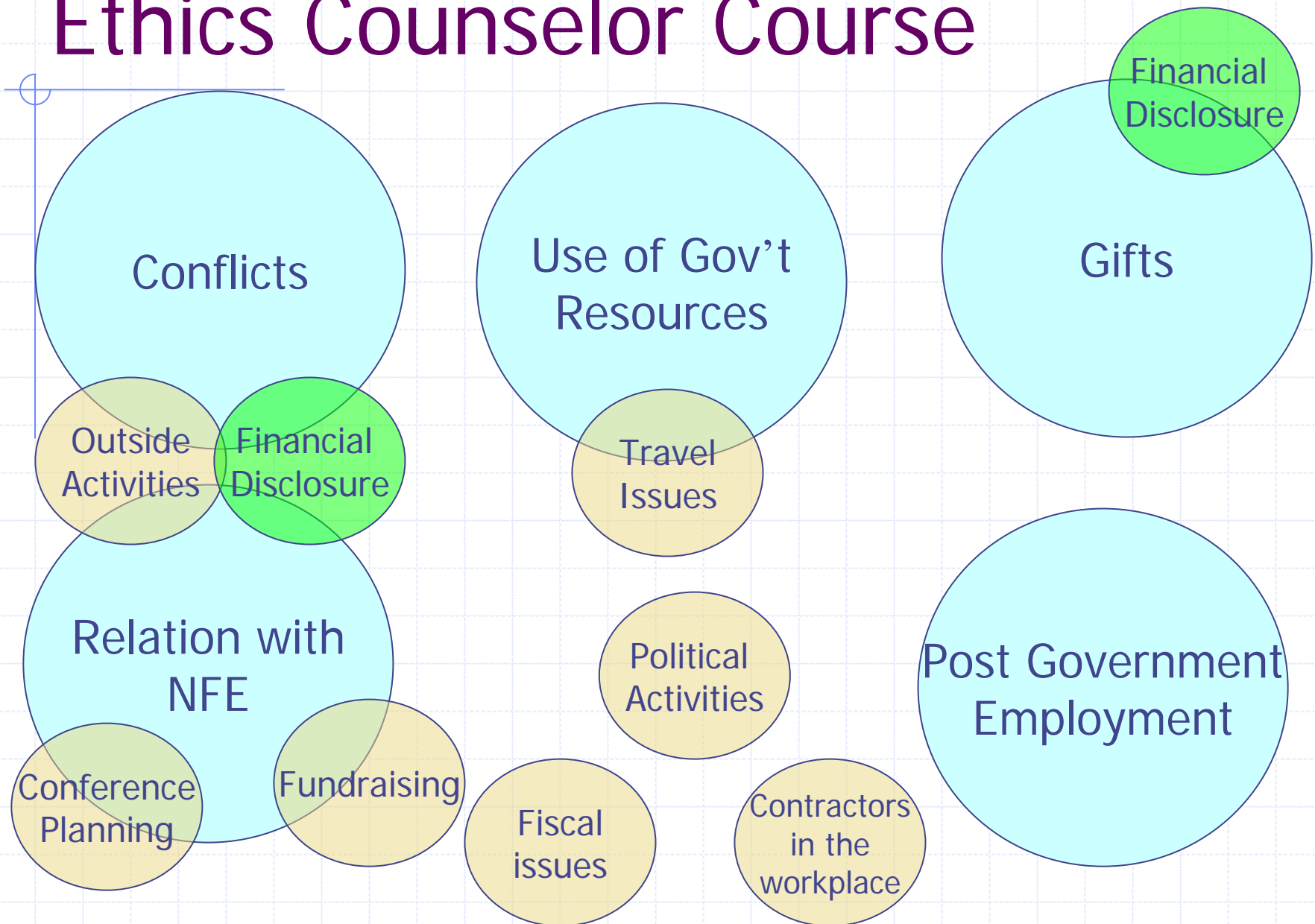


Conflicts of Interest

Fifth Ethics Counselors Course
Army Judge Advocate's
General School

16 April 2007 – Steve Coyle

Ethics Counselor Course



Conflicts – What is it good for?

- ◆ Substantive basis for the financial disclosure program
- ◆ Advice to personnel seeking to avoid or deal with conflicts
 - Criminal dimension
 - Pocketbook dimension
- ◆ Advice to criminal investigator and to discipline authorities
- ◆ Basic principle underlie other areas of the Ethics practice

MERIT SYSTEMS PROTECTION BOARD CASES
MISUSE AND OTHER VIOLATIONS OF THE ETHICS REGULATIONS
FEBRUARY 1, 2007

Prepared by Roberto DiBella, Office of Chief Counsel, Drug Enforcement Administration;
MSPB Reporter, Interagency Ethics Council

The Washington Post

MEMORANDUM

TO: Design
Gener

FROM: Rober
Direc

SUBJECT: 2005

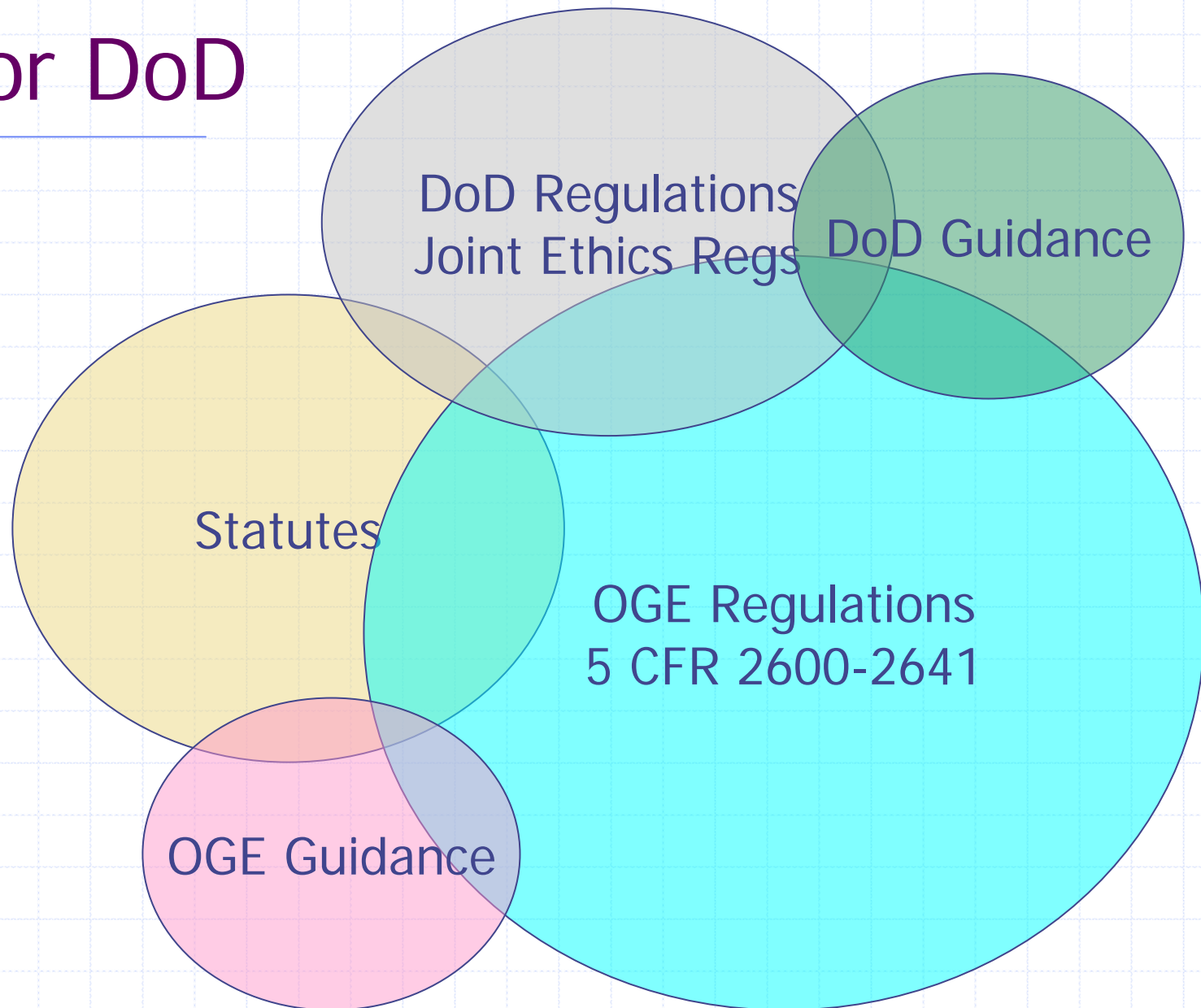
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circumstances of the case. The agency filed a petition for review. On review the Board first sustained all the charges, and then found that the agency's penalty of a demotion and a 45-day suspension was reasonable under the circumstances. The Board did not agree with the AJ's conclusions that the appellant "could not be faulted for honestly believing that there was absolutely nothing wrong with the practice"; that several witnesses testified that they did not consider samples of drugs as a gift; or that soliciting and receiving the samples constituted no more than a technical violation of the ethics regulations. The Board found that the plain language of the Standards of Conduct and the explanatory pamphlet provided at ethics training were sufficient to put employees on notice that they were not to solicit items of monetary value from companies doing business with the agency, including pharmaceutical companies. The agency's table of penalties provided that a penalty from a reprimand to a removal is appropriate for a first offense of accepting gifts or gratuities from individuals or firms doing business or having contractual relations with the agency.

Accepting Gifts from Subordinates

Slozon-Petersen v. Department of the Air Force, 2005 MSPB Lexis 2067 (M.S.P.B. Apr. 27, 2005). The appellant was removed for accepting \$ 1,820 from a subordinate on September 27, 2002, and that she accepted an additional \$ 1,000 from the same employee on September 10, 2003. Despite recognizing the appellant's 20-year career in federal service and lack of previous discipline, the Deciding Official determined that the offenses were serious because the appellant was a contracting officer and supervisor, required to exercise considerable discretion when awarding and administering contracts for the agency. The Deciding Official believed the appellant's actions violated the trust placed in her as a warranted contracting officer; and believed the appellant's attitude showed a lack of potential for rehabilitation. The Board noted that the appellant failed to express any real appreciation that one of the purposes of 5 C.F.R. § 2635.302 is to avoid conflicts of interest and appearances of such conflicts between a supervisor and her subordinate's official duties and private relationships, a purpose not well-served by the two significant gifts in this case.

The Ethics Reference Universe for DoD



Criminal conflict of interest statutes of general applicability

- ◆ 18 U.S.C. 201—Bribery & illegal gratuities
- ◆ 18 U.S.C. 203—Representational services
- ◆ 18 U.S.C. 205—Claims and other matters affecting the Government
- ◆ 18 U.S.C. 208—Acts affecting a personal financial interest
- ◆ 18 U.S.C. 209—Salary of Government officials

Other statutes to keep in mind

- ◆ 5 U.S.C. 3110—Nepotism
- ◆ 26 U.S.C. 1043—Tax Break For Qualifying Divestitures
- ◆ 5 U.S.C. 101 to 111—Public Financial Disclosure Requirements
- ◆ 18 U.S.C. 1001 & 1018—False statements and documents

Never tell a lie!

But for goodness sake
don't blurt out the truth!!!

Practice note—What also appears on indictments

- ◆ 18 U.S.C. 371—Conspiracy
- ◆ 18 U.S.C. 1343—Fraud by wire, radio, television
- ◆ 18 U.S.C. 1346—Honest services fraud
- ◆ 18 U.S.C. 1957—Money laundering
- ◆ 26 U.S.C. 7201—Tax evasion

Code of Federal Regulations— Conflict Provisions

- ◆ 5 CFR 2634—Financial Disclosure, Qualified Trusts, & Certificates of Divestiture
- ◆ **5 CFR 2635—Standards of Ethical Conduct for Employees of the Executive Branch**
- ◆ 5 CFR 2640—Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208

Standards of Ethical Conduct

5 C.F.R. 2635

- A. General Provisions
- B. Gifts from Outside Sources
- C. Gifts Between Employees
- D. Conflicting Financial Interest
- E. Impartiality in Performing Duties
- F. Seeking Other Employment
- G. Misuse of Position
- H. Outside Activities
- I. Related Statutory Authorities

Standards of Ethical Conduct

5 C.F.R. 2635

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- G. Misuse of Position
- H. Outside Activities
- I. Related Statutory Authorities

DoD Joint Ethics Regulations

1. General Information
2. Standards of Ethical Conduct
3. Activities with Non-Federal Entities
4. Travel Benefits
5. Conflicts of Interest
6. Political Activities
7. Financial and Employment Disclosure
8. Seeking Other Employment
9. Post-Government Service Employment
10. Enforcement
11. Training
12. Ethical Conduct

DoD Joint Ethics Regulations

1. General Information
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5. Conflicts of Interest
6. Political Activities
7. Financial and Employment Disclosure
8. Seeking Other Employment
9. Post-Government Service Employment
10. Enforcement
11. Training
12. Ethical Conduct

Other references & resources

◆ OGE opinions and DAEO-Grams

- www.usoge.gov/home.html

◆ SOCO Guidance and Advisories

- www.dod.mil/dodgc/defense_ethics//

◆ Interagency Ethics Council

- www.iecjournal.org/iec/

◆ Air Force Materiel Command

- afmcethics.wpafb.af.mil/

Acts affecting a personal financial interest

18 USC 208

5 CFR 2635
Subpart D

An officer or employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

Officer or Employee

◆ OGE regulation excludes enlisted personnel

- But JER 1-300b(1)(a) & JER 5-301 imposes 18 U.S.C. 208 and 209 restrictions on enlisted (and Title 32 National Guard Members)

◆ Special Government Employees (SGEs) are Officers or Employees

- 130 day limit per 365 day period
- Reserve officers if serves less than 130 days or involuntary recalls

- Impact on 18 U.S.C. 203, 205, 208, & 209

JER
1-300
5-301

5 CFR 2635
.102

Personal and Substantial Participation

18 USC 208

◆ Participation

- decision, approval, disapproval, recommendation, advice, investigation, or otherwise (18 USC §208(a))

◆ Personally

- direct or active supervision of the participation of a subordinate in the matter (5 CFR §2635.402(b)(4))

◆ Substantial

- More than official responsibility, knowledge, perfunctory or administrative involvement or involvement on a peripheral issue. (5 CFR §2635.402(b)(4))

5 CFR 2635
.402

5 CFR 2640
.103

Particular Matter

◆ The term particular matter encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. (5 CFR §2635.402(b)(3) & 2640.103)

OGE treatise on “Matters” can be found in
DAEO-Gram DO-06-029 (4 Oct 2006)

5 CFR 2635
.402

5 CFR 2640
.103

Imputed Interest

- ◆ Spouse
- ◆ Minor Child
- ◆ General Partner
- ◆ Organization of entity which the employee serves as an officer, director, trustee, general partner or employee
- ◆ Entity with who employee is negotiating employment or has an arrangement concerning prospective employment

5 CFR 2635
.402

5 CFR 2640
.103

Financial Interest

- ◆ Potential for financial loss or gain as a result of the Government action
- ◆ For example
 - Ownership of stock
 - Salary
 - Employment

Direct and Predictable Effect

- ◆ Direct: a close causal link between any decision or action in the matter and any expected effect of the matter on the financial interest
- ◆ Predictable: a real, as opposed to speculative possibility that the matter will affect the financial interest (magnitude of gain is immaterial)

5 CFR 2635
.402

5 CFR 2640
.103

Regulatory Exemptions

5 C.F.R. 2640.201

18 USC 208

- ◆ Diversified Mutual Funds
- ◆ Sector Funds
 - if not invested in sector
 - if invested in sector but hold < \$50K
- ◆ Certain Employee Benefit Plans

5 CFR 2640
.201

Regulatory Exemptions

5 C.F.R. 2640.202

18 USC 208

- ◆ De Minimis (securities)
 - publicly traded
 - aggregate value <\$15K (affecting parties)
 - aggregate value <\$25K (affecting nonparties)
 - \$25K/\$50K: matters of general applicability
- ◆ Short term Federal securities
- ◆ Securities owned by Tax Exempt Organization or General Partner

5 CFR 2640
.202

Regulatory Exemptions

5 C.F.R. 2640.203

18 USC 208

◆ “Exemption for financial interests arising from Federal Government employment”

- cannot make a determination that individually or specifically affects his own salary or benefits
- cannot make a determination, request, or recommendation that individually relates to or affects the salary or benefits of an individual whose interest are imputed to the employee

5 CFR 2640
.203

Regulatory Exemptions

5 C.F.R. 2640.203

18 USC 208

- ◆ An employee of the Federal Supply Service Division of GSA may participate in GSA's evaluation of the feasibility of privatizing the entire Federal Supply Service, even though the employee's own position would be eliminated if the Service were privatized.
- ◆ The employee could not participate in the implementation of a GSA plan to create an employee-owned private corp. which would carry out FSS functions under contract with GSA, because implementing the plan would result not only in the elimination of the employee's Federal position, but also in the creation of a new position in the new corporation to which the employee would be transferred, the employee would have a disqualifying financial interest in the matter arising from other than Federal salary and benefits.

5 CFR 2640
.203

Practice note: GAO may have their own idea of a conflict

18 USC 208

Two firms protested the Air Force's cancellation of solicitation for maintenance services, contending that the Air Force: (1) improperly conducted the competition; and (2) misevaluated their proposals. GAO held that the Air Force improperly cancelled the solicitation, since 14 of the agency evaluators held positions under the A-76 study and thus were subject to being contracted out, creating a conflict of interest that could not be mitigated. Accordingly, the protest was sustained, and GAO recommended that the Air Force: (1) rescind the cancellation of the solicitation, constitute a new technical evaluation team, the composition of which is consistent with this decision, and reevaluate ... B-281224 January 12, 1999

Individual Waivers

18 U.S.C. 208(b)(1) & 5 C.F.R. 2640.301

18 USC 208

- ◆ Advises “the Government official responsible for appointment to his or her position”
- ◆ Makes “full disclosure of the financial interest”
- ◆ “Receives in advance a written determination made by such official”
- ◆ That “the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee”

5 CFR 2640
.301

Individual Waivers—Factors

18 U.S.C. 208(b)(1) & 5 C.F.R. 2640.301

18 USC 208

- ◆ Type of financial interest
- ◆ Person's whose financial interest is involved
- ◆ Dollar value of the interest
- ◆ Nature and importance of employee's role in the matter
- ◆ Sensitivity of the matter
- ◆ Need of the employee's services in the matter

JER
5-302

5 CFR 2640
.301

Individual Waivers

18 USC 208

Obligation to Consult — 5 C.F.R. 2640.303

- ◆ When practicable, an official is required to consult formally or informally with OGC prior to granting a waiver
- ◆ A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics
- ◆ Generally, the waiver document is available to the public

5 CFR 2640
.303-.304

If all else fails

◆ Divestiture

- Certificates of Divestiture 5 C.F.R. 2634.1001-1008

◆ Qualified Trust 5 CFR 2634.401-.409

◆ Disqualification

- Must provide written notice of disqualification to supervisor upon determination that he will not participate in the matter JER 2-204

◆ Reassignment/Change of duties

◆ Termination

JER
2-204
7-306

5 CFR 2635
5 CFR 2634

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA : Case Number:
:
:
: Violations:
:
: 18 U.S.C. § 1018
: (Making a False Writing)
:
: 18 U.S.C. §§ 208, 216(a)(1);
LESTER M. CRAWFORD : 5 C.F.R. § 2640.202(c)
Defendant : (Conflict of Interest)

INFORMATION

The United States Attorney charges that:

COUNT ONE
Making a False Writing

Introduction

At all times relevant to this Information:

1. The United States Food and Drug Administration (“FDA”) was the country’s principal consumer protection and health agency, and regulated 25% of the gross domestic product, including the food supply, medical devices, drugs, vaccines, cosmetics, animal feed and drugs, and radiation-emitting items. The FDA issued and enforced regulations, authored policy recommendations, approved and recalled products, issued alerts to consumers, and took other actions.

2. Defendant LESTER M. CRAWFORD (“CRAWFORD”) held the most senior positions in the FDA. CRAWFORD served as Deputy Commissioner from February 25, 2002 until March 26, 2004, when he became Acting Commissioner. On February 15, 2005, CRAWFORD was nominated to become Commissioner. On July 18, 2005, the United States Senate confirmed





FILED

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIABY RS DEPUTYUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

June 2005 Grand Jury '07 CR 0329 LAB

| | | |
|---------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA, |) | Criminal Case No. _____ |
| Plaintiff, |) | |
| v. |) | INDICTMENT |
| KYLE DUSTIN FOGGO (1), |) | Title 18, U.S.C., Sec. 371 - |
| aka "Dusty" Foggo, |) | Conspiracy; Title 18, U.S.C., |
| BRENT ROGER WILKES (2), |) | Secs. 1343 and 1346 - Honest |
| Defendants.. |) | Services Wire Fraud; Title 18, |
| |) | U.S.C., Sec. 1957 - Money |
| |) | Laundering; Title 18, U.S.C., |
| |) | Sec. 2 - Aiding and Abetting |

The Grand Jury charges:

INTRODUCTORY ALLEGATIONS COMMON TO ALL COUNTS

1. From on or about July 6, 2001 to about November 3, 2004, defendant KYLE DUSTIN FOGGO, aka "Dusty" Foggo, was the senior officer in charge of support operations at an "Overseas Location" of the Central Intelligence Agency ("CIA"), and as such directed the Overseas Location's daily operations supplying equipment to personnel overseas.

2. From on or about November 4, 2004 to about May 12, 2006, defendant FOGGO was the Executive Director of the CIA (then the third-highest position in the CIA), and as such directed the CIA's daily operations.

SB:JAF:PLBH:nlv:San Diego
2/13/07

3. As a CIA employee, defendant FOGGO owed the United States and its citizens his honest services, including his loyal, faithful, disinterested, unbiased service, to be performed free of deceit, undue influence, **conflict of interest**, self-enrichment, self-dealing, concealment, fraud, and corruption.

4. As a public official, FOGGO had a responsibility to place **loyalty** to the United States, and its Constitution, laws, and **ethical principles**, above private gain. Among other things, FOGGO was prohibited from using or permitting the use of his office in a manner intended to coerce or induce another, including a subordinate, to provide any benefit to himself or his friends.

5. From in or about 1993 through in or about 2005, defendant FOGGO completed ethics training approximately eight times, and served approximately two years as a Deputy Ethics Official.

6. At all times material to this indictment, defendant BRENT ROGER WILKES owned and controlled ADCS, Inc. and numerous related entities, including Archer Defense Technologies, Inc., Group W Advisors Inc., Group W Transportation Inc., and Wilkes Corporation, which WILKES ran as a consortium of related companies (hereinafter referred to as "WILKES's companies").

7. From late 2002 on, WILKES's companies' main corporate office was at 13970 Stowe Drive, Poway, California. WILKES's companies also maintained an office located at 14020 Thunderbolt Place, Chantilly, Virginia.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term
Grand Jury Sworn in on April 29, 2005

UNITED STATES OF AMERICA : Criminal No. 06 - 301
:
: Grand Jury Original
v. :
: VIOLATIONS:
MICHAEL J. PETERS, : 18 U.S.C. § 371 (Conspiracy);
: 18 U.S.C. § 201(c)(1)(B) (Receipt of
Defendant. : Gratuity by a Public Official);
: 18 U.S.C. § 1001(a)(2) (False
: Statements); and
: 18 U.S.C. §§ 208(a), 216(a)(2) (Acts
: Affecting a Financial Interest).

INDICTMENT

The Grand Jury charges that:

SULLIVAN, J. EGS
B

COUNT ONE
CONSPIRACY

Introduction

FILED IN OPEN COURT

OCT 06 2006

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

1. At all times material to this Indictment, the National Aeronautics and Space Administration ("NASA") was an independent agency of the United States.
2. From in or about April 2002 to about August 2003, the defendant MICHAEL J. PETERS was a Senior Analyst for NASA, and worked in the Office of the Administrator, NASA headquarters, located at 300 E Street, S.W., Washington, D.C.
3. In or about 2002, because of his position at NASA, the defendant MICHAEL J. PETERS was required to complete and file a Questionnaire for National Security Position. This Questionnaire required that the defendant PETERS list all employment activities, including part-time work, and to file the form with NASA headquarters.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)
)
) Criminal No.
v.)
) 18 U.S.C. §§ 208(a)
) and 216 (a)(1) (Misdemeanor)
)
ERIC G. ANDELL)

)

INFORMATION

THE UNITED STATES CHARGES THAT:

Count One
Conflict of Interest
18 U.S.C. §§ 208(a) and 216 (a)(1)

On or about March 4, 2003, through on or about March 18, 2003, in the District of Columbia and elsewhere, the defendant, **Eric G. Andell**, an employee of the executive branch of the United States government, knowingly participated personally and substantially as such government employee, through decision, recommendation, and otherwise, in a particular matter, in which, to his knowledge, he had a financial interest; that is, **Eric G. Andell**, while employed as a Deputy Under Secretary for Safe and Drug-Free Schools within the U.S. Department of Education, approved and authorized his own official travel to New York City for travel in which

to his knowledge he had a financial interest, and thereafter caused monies belonging to the U.S.

Department of Education to be paid to him as reimbursement for his travel expenses.

In violation of Title 18 United States Code Sections 208(a) and 216(a)(1).

Dated: February 28, 2005

Noel L. Hillman
Chief, Public Integrity Section

By: Susan J. Park
Susan J. Park
Trial Attorney
Public Integrity Section
Criminal Division
U.S. Department of Justice
10th & Constitution Ave, NW
Washington, D.C. 20530
(202) 514-1412



Standards of Ethical Conduct

5 C.F.R. 2635

- A. General Provisions
- B. Gifts from Outside Sources
- C. Gifts Between Employees
- D. Conflicting Financial Interest
- E. Impartiality in Performing Duties
- F. Seeking Other Employment
- G. Misuse of Position
- H. Outside Activities
- I. Related Statutory Authorities

Impartiality in Performance of Official Duties—5 CFR 2635.502

- ◆ In effect this is a regulatory expansion of imputed interests based on
 - personal or business relationships; or
 - receipt of an extraordinary payment

5 CFR 2635
.502

Covered Relationships

- ◆ A person with whom the employee has or seeks a business, contractual, or other financial relationship
- ◆ A person who is a member of the employee's household or who is a relative with whom the employee has a close personal relationship
- ◆ A person for whom the employee's spouse, parent, or dependent child is serving or seeking to serve as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee
- ◆ Any person for whom the employee has, within the last year, served as officer, etc.
- ◆ An organization in which the employee is an active participant

5 CFR 2635
.502(b)

Covered Relationship

- ◆ A friend, relative, or person with whom he is affiliated in a nongovernmental capacity—5 CFR 2635.702(d)

5 CFR 2635
.702(d)

Covered Relationship—Catch All

- ◆ An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

5 CFR 2635
.502(a)(2)

So you've got a 'covered relationship'—what about it?

- ◆ Is there a **particular matter** involving **specific parties** that is likely to have a **direct and predictable** effect on a financial interest of the entity or person you have the covered relationship with?
- ◆ Would the circumstances cause a reasonable person with knowledge of the relevant facts to question your impartiality?
- ◆ Then you cannot participate unless:
 - You inform the agency designee; and
 - Receive authorization from the agency designee

5 CFR 2635
.502(a)

Agency Designee

- ◆ Refers to any employee who, by agency regulation, instruction, or other issuance, has delegated authority to make any determination, give any approval, or take any other action required or permitted by this part with respect to another employee – 5 CFR 2635.102

5 CFR 2635
.102

Agency Designee

- ◆ The first supervisor who is a commissioned military officer or civilian above GS/GM-11 in the chain of command or supervision of the DoD employee concerned. Except in remote locations, the Agency Designee may act only after consultation with his local Ethics Counselor. For any military officer in grade O-7 or above who is in command and any civilian PAS official, the Agency Designee is his Ethics Counselor.

Agency Designee Determination— The Standard

- ◆ Authorization permissible if the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations

5 CFR 2635
.502

Agency Designee Determination— The Factors

- ◆ The nature of the relationship involved
- ◆ The effect that resolution of the matter would have upon the financial interests of the persons involved in the relationship
- ◆ The nature and importance of the employee's role in the matter
- ◆ The sensitivity of the matter
- ◆ The difficulty of reassigning the matter
- ◆ Adjustments that may be made in the employee's duties that would reduce or eliminate questions of impartiality

5 CFR 2635
.502

Notification & Documentation

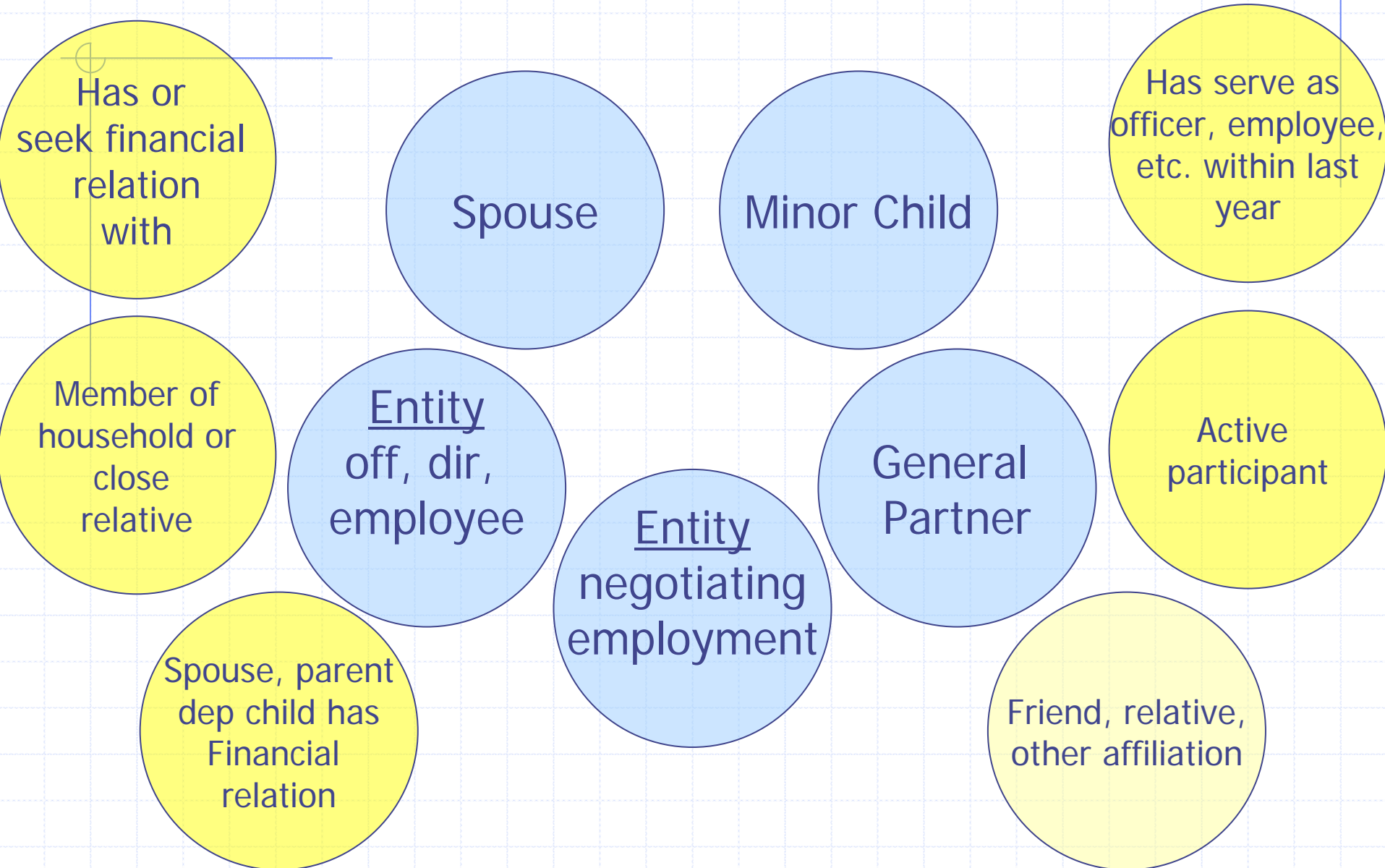
- ❖ Written documentation of authorization at discretion of Agency Designee or at the request of the employee
- ❖ Written notice of disqualification from employee to supervisor required upon determination employee will not participate in the matter JER 2-204.b

JER
2-204

5 CFR 2635
.502

Imputed Interest

Covered Relationship



GSA Chief Scrutinized For Deal With Friend No-Bid Contract A Mistake, She Says

By Scott Higham and Robert O'Harrow Jr.
Washington Post Staff Writers
Friday, January 19, 2007; A01



The chief of the U.S. General Services Administration attempted to give a no-bid contract to a company founded and operated by a longtime friend, sidestepping federal laws and regulations, according to interviews and documents obtained by The Washington Post. Administrator Lurita Alexis Doan, a former government contractor appointed by President Bush, personally signed the deal to pay a division of her friend's public relations firm \$20,000 for a 24-page report promoting the GSA's use of minority- and woman-owned businesses, the documents show. The contract was terminated last summer after GSA lawyers and other agency officials pointed out possible procurement violations, including the failure to adequately justify the no-bid deal or have it reviewed in advance by trained procurement officers, officials said. The GSA's Office of Inspector General has launched an investigation into the episode and briefed Justice Department lawyers, according to sources who said they were not authorized to speak publicly about the ongoing investigation. Officials at the inspector general's office and the Justice Department declined to comment. In an interview Wednesday, Doan said she believed she was following proper procedures to hire the best firm available to quickly produce a report on diversity practices. "I made a mistake," Doan said. "I thought I was moving this along. I was immediately informed that I wasn't necessarily moving it along in the way that was best for it. So at which point they canceled it, life went on, no money exchanged hands, no contract exchanged hands. "I'm stunned, absolutely stunned by the amount of legs that this has taken, you know, how this has like kind of jumped up and run away with things."



February 26, 2007

GSA chief seeks probe of inspector general's office

By Daniel Pulliam
dpulliam@govexec.com

A private attorney working for the head of the General Services Administration has asked a presidential ethics committee to investigate the agency's inspector general office to see whether employees there leaked sensitive information.

Michael Nardotti, a lawyer with the Washington law firm Patton Boggs who is representing GSA Administrator Lurita Doan, wrote in a Jan. 31 [letter](#) obtained by *Government Executive* that "confidential and protected GSA IG investigative information and documents were leaked to outside sources," compromising the IG investigative process and "extraordinarily" harming Doan.

Extraordinary Payments from former employers— 5 CFR 2635.503

- ◆ Already have “Covered Relationship” with former employer
- ◆ If you receive an extraordinary payment from that employer you have a two year disqualification from participating in any particular matter in which the former employer is a party

5 CFR 2635
.503

Extraordinary Payments from former employers— 5 CFR 2635.503

◆ What is an extraordinary payment?

- Must be greater than \$10,000
- Made after it became known individual was being considered for the Government position
- Outside former employer's established compensations or benefits program

◆ Waivers possible

- From a 18 USC 208 waiver authority

5 CFR 2635
.503

Getting to Yes!



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Bribery of public officials and witnesses

18 USC 201

◆ Coverage:

- Applies to public officials and those selected to be public officials
- Anyone acting on behalf of Government (e.g. some contractors)
- Enlisted (not limited to officer or employee)
- No special treatment for SGEs
- Giver/Promisor also liable

Bribery of public officials and witnesses

18 USC 201

◆ Prohibition #1:

- “**corruptly** demands, seeks, receives, accepts, or agrees to receive anything of value personally or for any other person or entity, in return for: (A) being influenced in performance of any official act”

Bribery of public officials and witnesses

18 USC 201

- ◆ Prohibition #2: (unlawful gratuity)
 - “otherwise than as provided by law... demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed by such official or person”

Bribery of public officials and witnesses

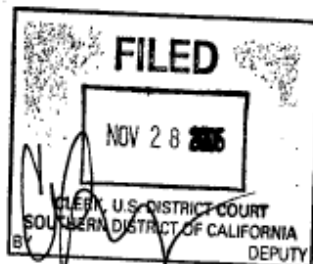
18 USC 201

◆ Exemption/Exceptions/Waivers:

- “[O]therwise than as provided by law for the proper discharge of official duties”
- 5 CFR 2635 and JER provide for legal gratuities
- No provision for waivers

JER
3-406

5 CFR 2635
.202(c)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 05cr2137-LAB
Plaintiff,)
v.) INFORMATION
RANDALL HAROLD CUNNINGHAM,) Title 18, U.S.C., Sec. 371 -
aka Randy "Duke" Cunningham,) Conspiracy to Commit Crimes against
Defendant.) the United States; Title 26,
U.S.C., Sec. 7201 - Tax Evasion

The United States Attorney charges:

INTRODUCTORY ALLEGATIONS

1. At all times material to this Information, defendant RANDALL HAROLD CUNNINGHAM, aka Randy "Duke" Cunningham, was a Member of the United States House of Representatives for Congressional Districts located in San Diego County, within the Southern District of California.

2. From on or about December 3, 2001, until on or about March 8, 2004, defendant owned a condominium located at 1211 South Eads Street, Arlington, Virginia (the "Arlington Condominium").

10. At all times material to this Information, "Coconspirator No. 3" controlled a financial company located in Rosedale, New York.
11. At all times material to this Information, "Coconspirator No. 4" was the president of a mortgage company located in Greenvale, New York.

COUNT 1 - CONSPIRACY

12. The introductory allegations set forth in paragraphs 1 through 11 of this Information are hereby realleged as if fully set forth herein.

13. Beginning no later than the year 2000, and continuing through about June 2005, within the Southern District of California and elsewhere, defendant RANDALL HAROLD CUNNINGHAM, aka Randy "Duke" Cunningham, conspired and agreed with Coconspirator No. 1, Coconspirator No. 2, Coconspirator No. 3, Coconspirator No. 4, and others (hereinafter collectively referred as the "Coconspirators") to commit the following offenses against the United States:

a. Bribery of a Public Official, that is, defendant and his Coconspirators conspired and agreed that defendant would directly and indirectly corruptly demand, seek, receive, and accept items of value from his Coconspirators, in return for being influenced in the performance of his official acts, in violation of Title 18, United States Code, Section 201(b)(2)(A);

b. Honest Services Mail Fraud, that is, defendant and his Coconspirators conspired and agreed to devise a material scheme to defraud the United States of its right to defendant's honest services, including its right to his conscientious, loyal, faithful, disinterested, unbiased service, to be performed free of deceit, undue influence, conflict of interest, self-enrichment, self-dealing,

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

05-1190M

- - - - -X

UNITED STATES OF AMERICA

C O M P L A I N T

- against -

(18 U.S.C. §§ 201(b), 371
and 1952; 41 U.S.C. § 53)

STEVEN POTOSKI,

Defendant.

- - - - -X

EASTERN DISTRICT OF NEW YORK, SS:

JOHN RILEY, being duly sworn, deposes and states that he is a Special Agent with the U.S. Army Criminal Investigation Division Command (USACIDC), duly appointed according to law and acting as such.

Upon information and belief, from at least January 1999 through on or about July 7, 2005, in the Eastern District of New York and elsewhere, defendant STEVEN G. POTOSKI being a public official and person selected to be a public official, directly and indirectly, corruptly demand, seek, receive, accept and agree to receive and accept anything of value personally and for any other person and entity, in return for being influenced in the performance of any official act, being influenced to commit and aid in committing, and to collude in, and allow, any fraud, and make opportunity for the commission of any fraud, on the United States, and being induced to do and omit to do any act in violation of the official duty of such official and person, all in

Compensation...in matters affecting the Government

18 USC 203

◆ Coverage:

- Member of Congress
- “Officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States”
 - ◆ Enlisted not included
- Special treatment for SGEs
- Giver/Promisor also liable

Compensation...in matters affecting the Government

18 USC 203

◆ Prohibition:

- “demands, seeks, receives, accepts, or agrees to receive or accept any **compensation** for any **representational services** as agent or attorney or otherwise, rendered or to be **rendered either personally or by another** ... in relation to any proceeding, application, ... or other **particular matter** in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial”

Compensation...in matters affecting the Government

18 USC 203

◆ Exemption/Exceptions/Waivers:

- May act with or without compensation as agent or attorney for parents, spouse, child, ...
 - ◆ Except in matters which he has participated personally and substantially as a Government employee
 - ◆ Except in matters subject of his official duties
 - waiver possible
- May give testimony under oath or make statement required to be made under penalty of perjury
- Otherwise than as provided by law for the proper discharge of official duties
- Note: does not apply to representations to Congress

Activities of officers and employees in ... matters affecting the Government

18 USC 205

◆ Coverage:

- “Officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States”
 - ◆ Enlisted not included
- Special treatment for SGEs

Activities of officers and employees in ... matters affecting the Government

18 USC 205
(a)(1)

◆ Prohibition #1: (Claim against US)

- Act as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim
- Note: Compensation not an element

Activities of officers and employees in ... matters affecting the Government

18 USC 205
(a)(2)

◆ Prohibition #2: (Covered Matter)

- Act as agent or attorney for anyone before any department, agency, court, court-martial, officer, or civil, military, or naval commission in connection with any covered matter in which the United States is a party or has a direct and substantial interest
- Note: Compensation not an element

Activities of officers and employees in ... matters affecting the Government

18 USC 205

◆ Exemption/Exceptions/Waivers:

- “other than in the proper discharge of his official duties”
- Same as for 18 USC 203 plus:
 - ◆ Representing federal employees in administrative proceedings
 - ◆ Representing certain non-profit organizations
- Note: does not apply to representations to Congress

Salary of Government Officials and employees payable only by the United States

18 USC 209

Prohibition:

Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee ... from any source other than the Government of the United States ... Shall be subject to the penalties set forth in section 216 of this title.

FILED

JUL - 2 2003

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PABLO F. GALVEZ,

Defendant.

Criminal Case No. 03cr 1861-J

INFORMATION

Title 18, U.S.C., Sec. 209(A) -
Federal Employee Receiving an
Improper Gratuity
(Felony)

The United States Attorney charges:

From on or about April 1, 2000 until May 2, 2003, within the Southern District of California, Pablo F. Galvez willfully received contributions, to wit, \$4,500 in gratuities, as compensation for his services while an employee of the United States Government as a Department of Veteran's Affairs Rating Assistant Technician from sources other than the Government of the United States, in violation of Title 18, United States Code, Section 209(a).

DATED: July 1, 2003.
CAROL C. LAM
United States Attorney

MATTHEW A. BROMUND
Special Assistant U.S. Attorney

Miscellaneous Provisions

- ◆ Nepotism 5 USC 3110
- ◆ Assignment of Reserves JER 5-408
- ◆ Commercial Dealings JER 5-409
- ◆ Civil Office Prohibition JER 5-407
- ◆ Multiple Positions JER 5-405
- ◆ Contracts with DoD Employees JER 5-402



NEPOTISM

WE PROMOTE FAMILY VALUES HERE-
ALMOST AS OFTEN AS WE PROMOTE FAMILY MEMBERS.

Nepotism

A public official may not appoint, employ, promote, advance, **or advocate** for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official.

Assignment of Reservist—JER 5-408

- ◆ Don't assign to duties where they will have access to information that could give unfair advantage to private employer
- ◆ Screen Reservists to ensure no actual or apparent conflict exists
- ◆ Reservist has an affirmative duty to disclose and likely conflict

Commercial Dealings—JER 5-409

A DoD employee shall not knowingly solicit or make solicited sales to DoD personnel who are junior in rank, grade or position, or to the family members of such personnel, on or off duty.

Civil Office Prohibition JER 5-407

Regular military officers on the active duty list and retired Regular military officers [and Reserve officers] on active duty for more than [270] days may not hold civil office, unless expressly authorized by law 10 U.S.C. 973(b)

Multiple Positions JER 5-405

- ◆ Subject to certain limitations, civilian DoD employees may hold two distinctly different Federal Government positions and receive the salaries of both if the duties of each are performed.
- ◆ Absent specific authority, however, military members may not do so because any arrangement by a military member for rendering services to the Federal Government in another position is incompatible with the military member's actual or potential military duties. That a military member may have leisure hours during which no official duty is performed does not alter the result.

Contracts with DoD Employees

JER 5-402

“[A] contracting officer shall not knowingly award a contract to a Government employee or a business concern or other organization owned or substantially owned by one or more Government employee.”

- Federal Acquisition Regulations 3.601

◆ 18 USC 203, 205 and 208 may also apply

Special Government Employee (SGE)

- ◆ Given their limited employment they are treated differently for 18 USC 203, 205, 207, 208, and 209.
- ◆ Serve less than 130 days within 365 day period.
- ◆ Two special subcategories: 1) serve less than 60 days; 2) serve on an advisory committee.